IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4003 of 2006(A)

CC.1699/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

REVN. PETITIONER: COMPLAINANT

SANJAYAN, S/O. RAGHAVAN,
RAHUL BHAVAN, NEDUMBANA P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.C.R.JAYAKUMAR

RESPONDENTS: STATE & ACCUSED
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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SHAJI, S/O. LAKSHMANAN PILLAI,
SARASWATHY BHAVAN, AYIREMTHENGU,
KOOTTIKKADA P.O., KOLLAM.

R1 BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.R.P.NO. 4003 OF 2006

Dated this the 30th day of November,2006

O R D E R

In the manner in which I propose to dispose of the Revision, I do not think that notice need be issued to the second respondent. Heard the learned Public Prosecutor appearing for the first respondent.

2. The petitioner filed the complaint in C.C.No.1699 of 2003, on the file of the Court of the Judicial Magistrate of the First Class II, Kollam against the respondent under Section 138 of the Negotiable Instruments Act. The accused appeared in November, 2004. There was an occasion to issue non-bailable warrant to the accused as condition in bail bond was not satisfied. On 16.11.2004, the accused surrendered and the non-

bailable warrant was recalled. Thereafter, the case was posted to several dates. On 22.9.2005, the case was adjourned to 19.11.2005 and it was stated that no further time would be granted to adduce evidence. On 19.11.2005, both parties were present, but the case was adjourned to 23.12.2005. Again the case was adjourned to 17.3.2006 by notification. On 17.3.2006, the accused was absent. The complainant was examined on that date. The counsel for the accused requested for further time and the case was adjourned to 7.4.2006, on payment of cost of Rs.250/- to the complainant. On 7.4.2006, the complainant was present. However, the accused was absent. The counsel for the accused was also absent. The amount of costs ordered earlier was not paid. The court below cancelled the bail bond of the accused and non-bailable warrant was issued against the accused. The court below also issued notice to the sureties and the case was posted to 18.5.2006. On

18.5.2006, the complainant was present. Accused remained absent. Court below passed an order issuing non-bailable warrant as against the accused. There was also a direction to take steps under Sections 82 and 83 of the Code of Criminal Procedure. The case was posted to 18.8.2006 for taking steps. On 18.8.2006, though the complainant was present, it was seen that no steps were taken by him for the issuance of non-bailable warrant and for taking proceedings under Sections 82 and 83 of the Code of Criminal Procedure. On that ground, the complaint was dismissed under Section 204(4) of the Code of Criminal Procedure.

3. It is submitted by the learned counsel for the petitioner that in the facts and circumstances of the case as disclosed in the proceedings, the court below ought to have granted an opportunity to the petitioner to take steps before dismissing the complaint under Section 204(4) of the Code of

Criminal Procedure. In this case, the complainant was examined in chief. The accused did not turn up for cross examination of PW1 and evidently he did not give instructions to the counsel to cross examine PW1. Even on the subsequent dates, the accused did not appear. In the facts and circumstances of the case, I am inclined to accept the request made by the learned counsel for the petitioner to afford one more opportunity to the petitioner to take necessary steps.

4. In the facts and circumstances of the case, I am inclined to set aside the order impugned on the following conditions: The petitioner shall appear before the trial court on 14.12.2006 and take necessary steps before 18.12.2006. If the petitioner/complainant fails to appear and to take the necessary steps on the dates aforesaid, the order impugned in this Revision would stand confirmed.

The Criminal Revision Petition is allowed as above.

Registry shall send back the records urgently.

Issue photocopy of the order today itself.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006